

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FILED  
IN CLERK'S OFFICE  
2004 JUN 23 P 3:27  
SUPERIOR COURT  
DEPT. OF THE  
DISTRICT OF TRIAL COURT

04 11439 RWZ NO. 89-1942 A

MAGISTRATE JUDGE Alexander

FRED A. KOZA,  
Plaintiff,

v.

ARA ERESIAN, JR., INDIVIDUALLY AND  
AS TRUSTEE OF THE ERESIAN FAMILY  
TRUST NUMBER TWO; FOUR COURTLAND  
REALTY TRUST; NUMBER TEN BOURNE  
REALTY TRUST; NUMBER TWENTY GUILD  
REALTY TRUST; NUMBER TEN RIPLEY  
STREET TRUST<sup>1</sup>; NUMBER TEN KING REALTY  
TRUST; NUMBER FOURTEEN DUXBURY  
REALTY TRUST, and KING REALTY TRUST;  
EVELYN J. ERESIAN, MELANIE C. ERESIAN  
and EVA MARIE ERESIAN,  
Defendants

RECEIPT # 56840  
AMOUNT \$ 50  
SUMMONS ISSUED N/A  
LOCAL RULE 4.1     
WAIVER FORM     
MCF ISSUED     
BY DPTY CLK F.O.M  
DATE 6/23/04

<sup>1</sup> The Plaintiff has misnamed 'Number Ten Ripley Street Trust'; It should read "Number Ten Ripley Street Realty Trust". It has also come to the attention of counsel since filing an amended responsive pleading on behalf of Evelyn J. Eresian, Melanie C. Eresian and Eva Marie Eresian that the Plaintiff has also misnamed 'Four Courtland Realty Trust'; it should read 'Number Four Courtland Realty Trust'.

NOTICE OF REMOVAL

Pursuant to the provisions of 28 U.S.C. secs. 1332 and 1441, named Defendants Evelyn J. Eresian, Melanie C. Eresian and Eva Marie Eresian<sup>2</sup>, joined by Ara Eresian, Jr., Individually and as Trustee of the Eresian Family Trust Number Two; [Number] Four Courtland Realty Trust; Number Ten Bourne Realty Trust; Number Twenty Guild Realty Trust; Number Ten Ripley Street [Realty] Trust; Number Ten King Realty Trust; Number Fourteen Duxbury Realty Trust, and King Realty Trust, hereby remove the above captioned action from the Superior Court Department of the Trial Court, Worcester Division, County of Worcester, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts – Eastern Division.

As grounds for this removal, the Defendants state the following:

1. The Plaintiff, Hampton Properties, LLC<sup>3</sup>, is a Limited Liability Company duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business located at 51 Greenwood Street, County of Middlesex, Commonwealth of Massachusetts.

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<sup>2</sup> The remaining named Defendants to this action, to wit: Ara Eresian, Individually and as Trustee of the various [real estate] Trusts set forth in the caption of this action have, by executing the same below, joined in and assented to the removal of this case.

<sup>3</sup> Although Hampton Properties, LLC has been previously substituted as the sole party plaintiff in the within action, the Defendants (other than Ara Eresian, Jr.) were never served with a copy of the motion seeking such substitution, and thus collectively, do not waive their right to subsequently challenge the substitution on due process grounds.

2. The Defendant, Evelyn J. Eresian, is a natural person with a residential address of 25 Westwood Road, Shrewsbury, County of Worcester, Commonwealth of Massachusetts.
3. The Defendant, Melanie C. Eresian, is a natural person with a residential address of 25 Westwood Road, Shrewsbury, County of Worcester, Commonwealth of Massachusetts.
4. The Defendant, Eva Marie Eresian, is a natural person with a residential address of 25 Westwood Road, Shrewsbury, County of Worcester, Commonwealth of Massachusetts.
5. The Defendant, Ara Eresian, Jr., is a natural person with a residential address of 25 Westwood Road, Shrewsbury, County of Worcester, Commonwealth of Massachusetts.
6. The Defendant, Ara Eresian, Jr., is [also] a named Trustee of various [real estate] Trusts, to wit: The Eresian Family Trust Number Two; Number Four Courtland Realty Trust; Number Ten Bourne Realty Trust; Number Twenty Guild Realty Trust; Number Ten Ripley Street [Realty] Trust; Number Ten King Realty Trust; Number Fourteen Duxbury Realty Trust and King Realty Trust.

7. Pursuant to the provisions of 28 U.S.C. sec. 1441(c), the aforementioned Defendants expect to bring a separate and independent claim or cause of action<sup>4</sup> which (i) would be removable if sued upon alone, (ii) will be joined with the within action, and (iii) when so joined, the controversy shall exceed \$ 75,000.00, exclusive of interest and costs.
8. Thirty (30) days have not elapsed since a copy of the initial pleading setting forth a claim for relief upon which such action or proceeding is based has been received by either Evelyn J. Eresian, Melanie C. Eresian or Eva Marie Eresian through service or otherwise, or within thirty (30) days after service of a summons upon any of them if such initial pleading has then been filed in court and is not required to be served.

For the foregoing reasons, the Defendants respectfully remove the within action to the United States District Court for the District of Massachusetts - Eastern Division from the Superior Court Department of the Trial Court, Worcester Division, County of Worcester, Commonwealth of Massachusetts.

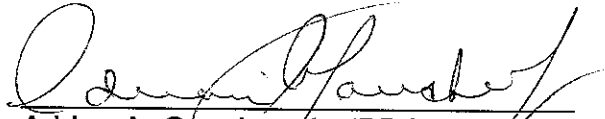
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<sup>4</sup> Evelyn J. Eresian, Melanie C. Eresian and Eva Marie Eresian have already served their claim for relief upon Hampton Properties, LLC in the form of a Declaratory Judgment action which seeks to determine, *inter-alia*, whether the assignment of the 'claim' originally held by Frad A. Koza against defendant Ara Eresian, Jr., Individually and as Trustee of the various named [real estate] trusts (to which each of them hold either a legal or beneficial interest) constituted a valid assignment.

The controversy presented in said action concerns, *inter-alia*, a **federal question involving federal substantive law** since Mr. Koza was previously a named debtor in the [bankruptcy] matter styled *In re* Fred A. Koza, United States Bankruptcy Court for the District of Massachusetts, Case No. 93-40386-JFQ and the 'claim', which had been listed in his schedules, had not been either administered or abandoned to Mr. Koza pursuant to existing federal law at the time of the alleged assignment to Hampton, and even continues to the present day to remain property of Mr. Koza's [bankruptcy] Estate.

EVELYN J. ERESIAN; MELANIE C.  
ERESIAN and EVA MARIE ERESIAN,

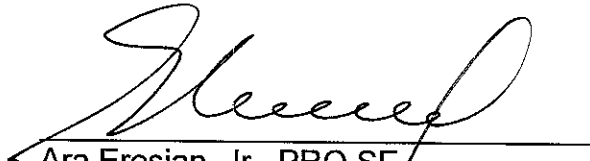
by their Attorney,



Adrian A. Gaucher, Jr. (BBO #187040)  
GAUCHER and GAUCHER  
60 Hamilton Street  
Southbridge, MA 01550-1808  
Tel: (508)-764-3259

Date: June 22, 2004

ARA ERESIAN, JR., INDIVIDUALLY,



Ara Eresian, Jr., PRO SE  
P.O. Box 499  
Shrewsbury, MA 01545  
Tel: (508)-426-5374

Date: June 22, 2004

ARA ERESIAN, JR., TRUSTEE<sup>5</sup>,

by: 

Ara Eresian, Trustee, PRO SE  
P.O. Box 499  
Shrewsbury, MA 01545  
Tel: (508)-426-5374

Date: June 22, 2004

<sup>5</sup> Of the various named Defendant [real estate] Trusts set forth in the caption of the case.

CERTIFICATE OF SERVICE

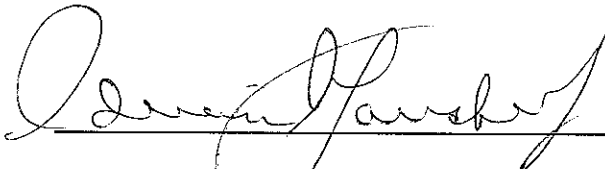
I, Adrian A. Gaucher, Jr., hereby certify that on the <sup>23<sup>rd</sup></sup>~~22<sup>nd</sup>~~ (original) day of June, 2004, I served a copy of the within 'Notice of Removal', via first class mail, postage prepaid, upon the following parties/counsel of record/parties-in-interest thereto:

Mark S. Foss, Esquire  
MacCarthy, Pojani & Hurley, LLP  
446 Main Street – 21<sup>st</sup>. floor  
Worcester, MA 01608

Ara Eresian, Jr., PRO SE  
P.O. Box 499  
Shrewsbury, MA 01545

Arthur P. Bergeron, Esquire  
27 Prospect Street  
Marlborough, MA 01757

Angelo P. Catanzaro, Esquire  
Catnazarro & Allen, P.C.  
100 Waverly Street  
Ashland, MA 01721

  
Adrian A. Gaucher, Jr.

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Fred A. Koza  
(alleged successor-in-interest  
Hampton Properties, LLC)

## DEFENDANTS

Ara Eresian, Jr., Individually and as  
Trustee: Evelyn J. Eresian and  
Eva Marie Eresian

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Middlesex  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Worcester  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER):  
Mark S. Foss, Esquire  
MacCarthy, Pojani & Hurley, LLP  
446 Main Street - 21st. floor, Worcester, MA 01608  
Tel: (508)-798-2480

ATTORNEYS (IF KNOWN):  
Adrian A. Gaucher, Jr., Esquire  
GAUCHER and GAUCHER  
60 Hamilton Street  
Southbridge, MA 01550-1808  
Tel: (508)-764-3259

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF  
Citizen of Another State ☐ 2 PTF ☐ 2 DEF  
Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF  
Incorporated or Principal Place of Business in This State ☐ 4 PTF ☐ 4 DEF  
Incorporated or Principal Place of Business in Another State ☐ 5 PTF ☐ 5 DEF  
Foreign Nation ☐ 6 PTF ☐ 6 DEF

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Declaratory Judgment - 28 USC sec. 2201, et seq.

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 22, 2004

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Koza v. Eresian, et al  
(alleged successor-in-interest, Hampton Properties, LLC)

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- X   II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730,  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,  
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,  
380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,  
690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

\*Also complete AO-120 or AO-121  
for patent, trademark or copyright cases

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Adrian A. Gaucher, Jr. (for Defendants Evelyn J. Melanie C. Eresian  
GAUCHER and GAUCHER - 60 Hamilton Street Eva Marie Eresian and  
ADDRESS Southbridge, MA 01550-1808 Ara Eresian, Jr., Trustee)  
TELEPHONE NO. Tel: (508)-764-3259

Ara Eresian, Jr., PRO SE (for Defendant Ara Eresian, Jr.,  
P.O. Box 499 Individually)  
Shrewsbury, MA 01545  
Tel: (508)-426-5374

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